

CRANSTON

Weapons returned to Vietnam veteran

Robert Machado, ACLU sued after police seized guns, swords for 'safekeeping'

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A Vietnam veteran whose weapons collection was seized by the Cranston police for safety reasons got his guns back, the city solicitor said.

The Cranston police returned Robert Machado's weapons and paid him \$2,500 for time spent away from his guns to resolve a lawsuit brought by the Rhode Island Affiliate of the American Civil Liberties Union accusing the city of violating his right to due process and his right to bear arms, according to Machado's lawyer Thomas W. Lyons. In addition,

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he received \$2,000 for legal fees in the settlement.

The police seized Machado's guns on Sept. 13, 2011, for "safekeeping" from his 474 Farmington Ave., Cranston, apartment after responding to a concerned call that Machado might harm himself. Machado, who has posttraumatic stress disorder, was taken to Our Lady of Fatima Hospital for a mental health evaluation.

Police had seized various weapons he lawfully possessed, including firearms and a collection of ceremonial samurai swords," according to an ACLU news release Friday announcing the settlement.

The police ran his two firearms through a national database and came up negative for criminal activity.

Machado returned from the hospital the same day and found his weapons missing. He asked police to return them and was told to get a letter from a therapist saying he was not a threat to himself, court records show.

He got a letter from Dr. Lawrence H. Weiner, who treats his PTSD, attesting to his sanity without suicidal tendencies or thoughts. Weiner indicated there should be no concerns about returning the weapons.

Machado asked again and was told he needed a court order for their return. Machado learned from a court clerk there was no such remedy since Machado had not been criminally charged, records show. Still, police refused to return his weapons.

Machado reached out to the ACLU and, in June, sued the police, alleging police deprived him of his property without due process of law

and violated his right to bear arms.

"We did want to give the guns back, but just not without a release," Cranston City Solicitor Christopher M. Rawson said. The police require people whose guns are seized, but who have not been criminally charged, to sign a release absolving the city of any liability for damages or injuries related to the guns, he said.

"We did get the release, which is a good thing," Rawson said.

Rawson observed that there is an uptick in similar scenarios that are being evaluated on a "case-by-case" basis. "It is a pretty scary situation, but there's the Second Amendment," he said, on the right to bear arms.

Lyons said the ACLU fell short of negotiating a change in police policy regarding the gun seizures. Guns can usually be seized in relation to a criminal case and then a District Court order would be needed for their return.

Rawson said the ACLU wanted the police to reach a consent agreement that would have allowed a hearing before a federal tribunal to get guns returned in non-criminal cases. The police, Rawson said, could not be bound to such terms.

"We're reasonably satisfied with the result," Lyons said. "We anticipate it coming up again. This sort of thing is happening with some degree of regularity around the state."

Cranston Police Chief Marco Palombo Jr. declined to comment on the settlement.

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